

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JOHN CROWNOVER)	
Claimant)	
VS.)	
)	Docket No. 253,165
CHANUTE MANUFACTURING)	
Respondent)	
AND)	
)	
TRAVELERS INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier appealed the January 3, 2002 Award entered by Administrative Law Judge Jon L. Frobish. The Board heard oral argument on July 16, 2002.

APPEARANCES

Pamela Phalen of Pittsburg, Kansas, appeared for claimant. Leigh C. Hudson of Fort Scott, Kansas, appeared for respondent and its insurance carrier.

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Award. Although in their brief to the Board respondent and its insurance carrier questioned claimant's entitlement to temporary total disability benefits, at oral argument respondent and its insurance carrier's counsel announced that there was no longer an issue concerning those benefits for the Board to address.

ISSUES

This is a claim for an accident and injury to the left lower extremity, which claimant alleges occurred from October 20 through 23, 1998. In the January 3, 2002 Award, Judge Frobish granted claimant benefits for a 65 percent scheduled injury to the left lower leg.

Respondent and its insurance carrier contend Judge Frobish erred. First, they argue that claimant failed to prove his left leg problem, which was diagnosed as deep vein thrombosis, was caused by a work-related injury. Second, they argue the Judge apparently did not read the record as the rating found by the Judge was higher than either of the functional impairment ratings provided by the two medical experts who addressed that issue. Accordingly, respondent and its insurance carrier request the Board to reverse the Award and deny claimant's request for benefits. In the alternative, they request the Board to limit claimant's award to one for a 20 percent functional impairment to the lower extremity.

Conversely, claimant contends the Award should be affirmed.

The only issues before the Board on this appeal are:

1. Did claimant sustain a permanent injury or impairment as the result of a work-related injury?
2. If so, what is the nature and extent of injury and disability?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Board finds and concludes:

Claimant was a long-time employee of respondent, having worked for respondent almost 33 years when he retired in 1998. Most of those years, claimant worked as an assembler. The record is not clear how long he had been assembling boilers for respondent, but when claimant began having problems with his left lower extremity that was his job. While assembling boilers, claimant spent hours every day on his knees with his legs in a bent position.

Claimant's leg problems began while at work on October 20, 1998. On that date, claimant felt pain in his left calf when he jumped down from a boiler panel that he was sitting on. Claimant testified, in part:

The day I got injured I was working on a panel sitting on a sawhorse probably about two, three feet, maybe about a foot, maybe two off the floor and I was up there, leg tucked under me like I always have to work and I got done with what I was doing, pulled myself up, literally, not kidding, just kind of stepped down on the concrete, kind of jumped, you know, like so, and when I hit the floor the calf just blew up.¹

¹ Regular hearing transcript, April 17, 2001, at p. 11.

Claimant immediately reported the incident to respondent and saw Dr. Gene Hahn, the company doctor, the same day. Claimant asked the doctor if it could be a blood clot but, according to claimant, the doctor thought claimant had injured his knee, causing fluid from the knee to go down into the calf. Dr. Hahn told claimant to stay off the left leg for two or three days to see how it did.

The swelling in his left calf diminished a bit and claimant returned to work on October 23, 1998. While at work on that date, claimant experienced additional problems. While swinging a sledgehammer, claimant missed his target, which pulled him down onto his hands and knees. Claimant could not stand as he could not breathe.

Respondent immediately sent claimant to the doctor, who immediately sent claimant to the hospital for tests. After a sonogram and x-rays, claimant learned he had a blood clot in his left leg from mid-calf to mid-thigh and a small clot in his lung. After several days in the hospital, on October 29, 1998, claimant then transferred to the University of Kansas Medical Center where he stayed until November 4, 1998.

The blood clot in claimant's lung dissolved but the clot in his left leg did not. Following his release from the University of Kansas Medical Center, claimant did not return to work due to the constant swelling and constant pain in his leg but, instead, chose to retire. At the time of the April 2001 regular hearing, claimant was continuing to take Coumadin for his blood clot.

The record includes two expert medical opinions regarding claimant's permanent functional impairment and two expert medical opinions concerning the cause of claimant's blood clots.

According to Dr. Glenn A. Barr, whom claimant hired to provide opinions in this claim, claimant sustained a 55 percent functional impairment to the left lower extremity under the fourth edition of the American Medical Association's *Guides to the Evaluation of Permanent Impairment (AMA Guides)*. Dr. Barr relates claimant's condition to his work activities. Dr. Barr, who is a general surgeon and who treats people with vascular problems, examined claimant in May 2000 and determined that as a result of his work activities that claimant sustained a left calf muscle strain with phlebitis and clot formation in the left calf, brawny edema and chronic stasis dermatitis of the left calf, residual lymphedema in the left calf, and secondary pulmonary embolization. The doctor testified that claimant's leg problems were related to his work and the inflammation of the calf muscle caused by jumping down from the panel at the time of the October 20, 1998 incident. The doctor explained, in part:

Usually trauma causes irritation and inflammation of tissues and especially the tissues of the lower extremity. The normal physiology of the lower extremity is that

the vein, the flow of blood in the vein, is slow and the physical activity of using the muscles of the lower extremity causes a pumping action, pumping the blood through the venous system in addition to the normal blood flow coming from the arterial side. Therefore whenever you traumatize the soft tissues of the lower extremity, the inflammation both to the muscle and the inflammation that results to the vessels which go through the muscle, causes the lining of the vein to be roughened and therefore it gets irritated and clots form on the roughened surface.²

Additionally, Dr. Barr also believes that claimant's working in a bent-knee position would have predisposed him to forming a blood clot. Moreover, less trauma would have been required to irritate the vein. The doctor added:

I believe that the clot formation was directly related to his work activities in that working in the bent-kneed position caused the dilatation and inflammation of the veins before the episode of trauma. When he sustained the muscular strain in the muscles of the left calf and the combination of the work in the bent-kneed position for long periods of time, the muscle strain of the calf is what created the circumstances that caused the clot to form and then subsequently break loose and go to the lung.³

Dr. Robert K. Thomen, II, who practices in the Ashley Clinic where claimant saw Dr. Hahn and who is a family practice physician, examined claimant in July 2001 and rated claimant's left lower extremity functional impairment at 20 percent due to deep vein thrombosis. The doctor testified that he did not own a copy of the fourth edition of the *AMA Guides* and for rating claimant merely used the pages forwarded to him by respondent and its insurance carrier's counsel. Dr. Thomen was not asked and, therefore, did not provide an opinion regarding the cause of the peripheral vascular disease in claimant's leg.

Finally, Dr. James H. Thomas, who is the chief of general and vascular surgery in the Department of Surgery at the University of Kansas Medical Center and one of the physicians who treated claimant, did not provide an opinion regarding claimant's functional impairment. But, instead, Dr. Thomas testified that claimant's deep vein thrombosis was not caused by his work. Instead, the doctor indicated it was more probably caused by some other factor such as a blood abnormality. Further, the doctor did not believe the injury that claimant sustained on October 20, 1998, when stepping or jumping down from the panel caused significant enough trauma for developing deep vein thrombosis.

² Deposition of Dr. Glenn A. Barr, June 28, 2001, at p. 22.

³ *Ibid.*, at p. 26.

According to Dr. Thomas, there are essentially three causes of deep vein thrombosis – decreased blood flow, abnormality in the lining of the vein, and a blood abnormality. The doctor opined that neither claimant’s job activities nor a one- to two-foot jump would have caused the deep vein thrombosis. Other than stating claimant’s deep vein thrombosis was probably caused by unknown factors that have not been investigated, the doctor was unable to otherwise determine a cause for claimant’s deep vein thrombosis.

Because of the temporal relationship between claimant’s incidents at work on October 20 and 23, 1998, and the blood clots in claimant’s left leg and lung, the central issue in this claim is whether claimant sustained sufficient trauma in his left leg as a result of those two work-related incidents to develop the deep vein thrombosis. Other than those two work-related incidents, the record fails to establish that claimant had any other risk factors for developing the deep vein thrombosis. The record also indicates that before October 20, 1998, claimant did not have any problems with either of his legs or problems with blood clots in any other part of his body.

The Board finds Dr. Barr’s opinions regarding causation persuasive. Accordingly, the Board affirms the Judge’s conclusion that claimant’s deep vein thrombosis was caused by a work-related injury. The Board is not persuaded that Dr. Barr’s functional impairment opinion is more accurate than that given by Dr. Thomen, or vice versa. Accordingly, the Board averages the two impairment ratings and finds that claimant sustained a 38 percent functional impairment to the left lower extremity. Therefore, the Award should be modified to decrease the permanent partial disability benefits that claimant is entitled to receive.

AWARD

WHEREFORE, the Board modifies the January 3, 2002 Award to grant claimant permanent disability benefits for a 38 percent permanent partial functional impairment for a scheduled injury to the left lower extremity.

John Crowover is granted compensation from Chanute Manufacturing and its insurance carrier for October 20 and 23, 1998 accidents and resulting disability. Mr. Crowover is entitled to receive .71 weeks of temporary total disability benefits at \$366 per week, or \$259.86, plus 75.73 weeks of permanent partial disability benefits at \$366 per week, or \$27,717.18, for a 38 percent permanent partial disability, making a total award of \$27,977.04, which is all due and owing less any amounts previously paid.

The medical evidence establishes that claimant needs ongoing prescription medications. Accordingly, respondent and its insurance carrier are ordered to provide claimant with ongoing medical treatment. In the event respondent and its insurance carrier do not provide claimant with an authorized physician, claimant may select his own doctor

and the medical expense incurred shall be the responsibility of respondent and its insurance carrier as if it were authorized medical treatment.

The Board adopts the remaining orders set forth in the Award that are not inconsistent with the above.

IT IS SO ORDERED.

Dated this ____ day of August 2002.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Pamela Phalen, Attorney for Claimant
- Leigh C. Hudson, Attorney for Respondent and its Insurance Carrier
- Jon L. Frobish, Administrative Law Judge
- Philip S. Harness, Workers Compensation Director